ensuring that the regulatory structure not impose undue administrative burdens on subscribers, cable operators, franchising authorities or the Commission.

If the Commission does not select an "effective competition" benchmark, Local Governments encourage the Commission to adopt a national "cost-based" benchmark model. This approach would also be consistent with the congressional mandates and could be based on normative costs for cable systems throughout the country. Creation of such normative costs would allow the benchmark to be applied in an administratively simple manner. Moreover, this approach would eliminate monopoly rents since it limits cable operators to their costs and a reasonable rate of return.

The Commission might consider as a third alternative a model based on rates regulated cable systems charged in 1986 -- the year cable rates were effectively deregulated in most of the country. The Commission might apply this standard if it has sufficient data available and finds it not unduly burdensome to adjust such rates up to a current rate by adjusting for inflation, and taking into account, among other things, system upgrades that occurred to sampled systems during this time period.

Whichever model the Commission ultimately chooses, the benchmark rate should be easily

administrable and not require any franchise-by-franchise area adjustments to determine the appropriate rate. In terms of the benchmark, Local Governments would support either a single national benchmark rate (e.g., X rate) or a "zone of reasonableness" benchmark rate (e.g., X rate ± Y), so long as such rate is "reasonable" and eliminates monopoly rents. Moreover, Local Governments would support the creation of a matrix of benchmark rates -- with differences in the matrix rates being based on system characteristics (e.g., plant miles, channel capacity, population density) to which the Commission believes rates are sensitive -- so long as a franchising authority can easily determine which matrix rate its cable system may charge.

Local Governments believe that the Commission must require a cable operator with a rate above the benchmark rate to reduce its rates to the benchmark level. The benchmark should require that most cable operators reduce their rates since studies show that most cable rates contain a monopoly rent. At an absolute minimum, the benchmark rate should result in rate reductions for approximately 28 percent of the nation's cable subscribers, which is the percentage of subscribers that Congress found were subject to the most egregious rate increases. See Section 2(a)(1), 1992 Cable Act.

Local Governments suggest that the Commission periodically review its benchmark model, and compare it with other benchmark alternatives -- as it begins to collect additional cost and price information -- to ensure that it best protects cable subscribers from unreasonable rates. The Commission also should periodically review the accuracy, administrative feasibility and advantages of various ways of implementing its benchmark model (i.e., single national benchmark rate, benchmark matrixes, zones of reasonableness). The Commission should make any modifications to the model -- or even change it -- to make sure cable subscribers are receiving the rate protections Congress intended in enacting the 1992 Cable Act.

c. The Commission Should Not Adopt Cost-of-Service Regulations

Local Governments disagree with the Commission's conclusion that "cost-of-service regulatory principles could have a secondary role for cable operators seeking to justify the reasonableness of rates that do not meet our primary benchmarking standard." NPRM at ¶ 33. The use of cost-of-service regulation only to justify rates higher than the benchmark would unfairly skew the Commission's rate regulations in favor of the cable operator at the expense of the consumer. A major

purpose of the 1992 Cable Act is to "ensure that consumer interest are protected in receipt of cable service."[20]

Moreover, use of cost-of-service regulation to justify higher rates would undermine the administrative advantages of the benchmark model since cable operators might try to use cost-of-service regulation to justify a

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[20] Consistent with this purpose, Local Governments believe that use of a case-by-case cost-of-service approach to regulating rates might be considered only in the following circumstances: First, a franchising authority might in some limited circumstances prefer, and be able to properly implement, the option of using a cost-of-service method of rate regulation. Second, a cable operator might use such a model to justify its rate where the operator is charging a rate below the benchmark, and desires to raise its rate to the appropriate benchmark rate. In such cases, a cable operator should not be allowed to automatically raise its rate to the appropriate benchmark rate without an appropriate showing. The fact that the cable operator is charging a lower rate suggests that such a rate is "reasonable." The fact that the rate is low may represent a conscious decision by the cable operator to charge, for example, a "loss leader" rate for basic cable service, while charging benchmark rates for other tiers of service. Only in this instance might a cable operator be permitted to use a cost-based model to demonstrate why it should be allowed to raise its rate to the benchmark level. A price cap formula may not be appropriate in such circumstances for even it may allow the cable operator to raise its rates higher than "reasonable."

Finally, to the extent that a significant number of cable operators seek to bring their rate up to the benchmark rate, the Commission should consider whether the benchmark rate itself should be lowered. A significant number of appeals to raise rates to the benchmark may demonstrate that the Commission has established a benchmark higher than the "reasonable" rate for cable service.

higher rate in hundreds or thousands of individual markets. Indeed, the Commission's use of the cost-of-service model would be inconsistent with Congress' desire that the Commission "create a formula that is uncomplicated to implement, administer, and enforce, and . . . avoid creating a cable equivalent of a common carrier 'cost allocation manual.'" See House Report at 83.

3. Regulation of Equipment

a. The Commission Should Unbundle Equipment and Installation Charges.

Local Governments agree with the Commission's conclusion that Congress intended to separate rates for equipment and installation from other basic tier rates, and that rates for installation should be unbundled from rates for the lease or sale of equipment. NPRM at ¶ 63. The structure of Section 623 demonstrates Congress' intent that these charges be unbundled. Section 623(b)(i) states that the rates for basic service must be "reasonable," whereas the rates for installation and equipment are subject to regulation under a separate subsection that requires that the rates be based on "actual costs." See Section 623(b)(3)(A). The fact that these items are subject to different rate standards demonstrates Congress' intent that they be priced separately.

Moreover, Local Governments agree with the Commission that the unbundling of equipment and installation may promote competition in the provision of equipment and installation, and that Congress intended to promote such competition -- particularly in the provision of equipment. See Section 17, 1992 Cable Act. Such competitive objectives would be undermined if equipment and installation costs were bundled with programming service costs.

b. Rates for Equipment and Installation Must Be Based on "Actual Cost."

Local Governments believe that cable operators should receive only their "actual cost" for cable equipment as determined by the actual price paid for such equipment or other appropriate objective measures.[21] As with programming service rates, Local Governments believe that the Commission should establish a benchmark rate (or rates) for installation since installation costs are not as readily identifiable as are equipment costs. Installation costs include not only the cost of supplies, equipment and vehicles, but also personnel, and the actual costs for different installations can vary considerably, depending on, for

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[21] The rate the Commission sets for equipment must also be consistent with Congress' goal to create a competitive market for equipment. See Section 17, 1992 Cable Act.

example, whether a cable operator is installing cable service for the first time to a household or reinstalling such service. In order to establish a benchmark rate, Local Governments suggest that the Commission simply determine the total amount a typical cable system spends on installation costs, divide that number by the number of subscribers, and come up with a set of rates for different installation services. Such rates should be for a one-time installation charge -- as typically done in the cable industry. This rate will be sufficient to ensure that cable operators recover "actual costs."

c. Installation and Equipment "Used" To Receive Basic Service Is Subject To "Actual Cost" Regulation.

The Commission seeks comments on how to determine the rate for installation and equipment used to receive both basic and other cable programming services. NPRM at ¶¶ 64-65. Local Governments believe that Congress intended to subject any charges for installation and the lease of equipment related to basic cable service to rate regulation based on "actual cost." The Conference Committee specifically amended Section 623(b)(3) to cover installation and equipment "used" to receive basic service, rather than installation and equipment "necessary" to receive such service (as proposed in the House bill), in order to "give[] the FCC greater

authority to protect the interests of the consumer." Conference Report at 64. The 1992 Cable Act and its legislative history, thus, do not indicate an intent by Congress to subject cable equipment "used" to receive basic and other programming services to other than "actual cost" regulation under Section 623(b)(3). This position also is supported by the fact that Congress explicitly subjected to "actual cost" regulation under Section 623(b)(3) an "addressable converter box or other equipment" used to receive premium and pay-per-view programming.

In light of the above, Local Governments believe that the Commission should subject any equipment and installation "used" to receive the basic service tier to "actual cost" regulation, regardless of whether it is also used to receive any other programming service(s). The only equipment and installation charges subject to "unreasonable" rate regulation pursuant to Section 623(c), then, would be that solely used to receive "cable programming services," as that term is defined in the 1992 Cable Act.

d. The Commission's Regulation Should Prohibit Separate Charges for Equipment Cable Subscribers Traditionally Receive at No Charge.

Local Governments believe that the Commission should also ensure that cable operators do not now start

charging cable subscribers for equipment that traditionally has not been provided at a separate charge. In order to distinguish equipment that should or should not be subject to individual subscriber charges, the Commission should employ the distinction employed in the common carrier context -- the distinction between network equipment and "customer premises equipment."[22]

e. Section 623 Does Not Prohibit Promotional Discounts.

Local Governments do not believe that Section 623 prohibits a cable operator from offering free or reduced-rate installation as a promotional tool; the statute simple ensures that a cable operator be allowed, if it desires, to recover the actual cost of such installation. The rates established under the Commission's regulations are simply ceilings for cable rates; the Commission should not interpret them to be floors.

f. Rates for Connecting Additional Television Receivers Should Be Based on Actual Cost

Local Governments believe the Commission should calculate the rate for the installation and monthly use

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[22] However, the Commission should ensure that cable operators do not undermine this distinction by imposing separate charges for components or parts of such customer premises equipment (e.g., a trap installed in a converter).

of connections for additional television receivers based on "actual cost," as suggested above for installation and equipment costs. Such "actual cost" regulation should not include any charge for the programming services that are received over an additional television receiver since a cable operator has already recovered such costs in the rate charged for cable service at the primary receiver (e.g., a cable subscriber who pays to receive basic cable service should have to pay once for that service; a cable operator should be prohibited from charging an additional basic cable service fee if the service is also received at other receivers in a household).

4. Cost of Franchise Requirements

Local Governments agree with the Commission's two key observations regarding the purpose of Section 623(b)(4). First, the subsection is intended to ensure the establishment of standards that will permit a cable operator, pursuant to Section 622(c), to identify on subscriber bills the amount of the bill attributable to PEG requirements. Second, the subsection does not mandate the establishment of separate cost-based charges -- apart from those for the basic tier generally -- for either the customer or the user of PEG channels for costs attributable to such requirements. Congress specifically required that such costs be

reflected in the rate charged for basic cable service. See Section 623(b)(2)(C)(vi). Thus, it would make no sense to assume that Congress intended for the Commission to double-bill for these charges by then imposing an additional charge on a cable subscriber or PEG user.

Local Governments believe the Commission should clarify that only the costs addressed in Section 623(b)(4) are costs attributable to PEG franchise requirements, and that it does not include costs attributable to franchise requirements in general. Such an interpretation is required by Section 622(c)(2), which states that a cable operator may itemize the amount "to support public, educational, or governmental channels or the use of such channels." This language makes clear that the only franchise costs the Commission must calculate pursuant to Section 623(b)(4), in order to permit a cable operator to itemize PEG costs pursuant to Section 622(c)(2), are PEG costs.[23]

Finally, Local Governments disagree that general overhead costs, on a per channel basis or otherwise,

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[23] The 1992 Cable Act's legislative history also makes clear that Congress did not intend for Section 623(b)(4) to cover non-PEG costs. Congress stated that the provision requires the Commission to "identify and allocate costs attributable to satisfying franchise requirements to support [PEG] channels." Conference Report at 60 (emphasis added).

should be allocated to PEG channels. A cable operator would incur these general overhead costs regardless of whether it provided PEG channels, and the provision of PEG channels represents only a minor increment in a cable operator's total costs. Moreover, Congress did not intend for the Commission to allocate overhead costs to PEG channels. Congress suggested that the inclusion of PEG channels on the basic tier was in fact a justification for not including a proportional part of overhead and other similar costs in calculating the basic tier rate and, by implication, that such costs should not be included in calculating PEG expenses. Congress stated that "the Commission may determine that the amount of joint and common costs allocated to the basic service tier should be less than the amount that would be allocated on a 'per channel' basis . . . because the basic service tier may contain public, educational and governmental channels." Conference Report at 63.

5. Service Charges

Section 623(b)(5)(C) requires that the Commission ensure that the rate for changing service tiers "not exceed nominal amounts" when such changes are done by computer or other similarly simple method. The Section requires that the charge "be based on the cost of such change" when it involves sending a service truck or some

other method. Congress intended that cable operators only recover their actual costs and not impose any additional charge that would "discourage subscribers from making such a selection." House Report at 84.

In addition to charges imposed for a change in programming service, the Commission's regulations should also limit the charges a cable operator imposes for other changes a cable subscriber may request, such as a change in equipment.[24] For instance, some cable operators charge "activation charges" for cable subscribers who wish to use their own remote control devices, rather than those supplied by a cable operator. This charge is for making the operator-supplied converter box compatible with the remote control device, and is often done by a computer in the cable operator's office. Congress did not intend for such charges to escape rate regulation.

6. Implementation and Enforcement

a. The Commission Should Permit Franchising Authorities Flexibility in Establishing Procedures to Implement the Commission's Regulations.

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[24] The Commission's regulations would be in addition to a franchising authority's right to regulate certain charges pursuant to Section 632 as a consumer protection measure. See Comcast Cablevision, Inc. v. City of Sterling Heights, 443 N.W.2d 440 (Mich. Ct. App. 1989), appeal denied, No. 86720 (Mich. Feb. 26, 1990) (Section 632 permits franchising authority to regulate disconnect fee for premium services; such regulation is not rate regulation pursuant to Section 623).

The Commission should not establish a formal hearing process or any other particular process for franchising authorities to use in reviewing rates. Except for time limits for reviewing rates and a few additional regulations recommended below in these Comments, the Commission should afford Local Governments maximum flexibility in structuring rate proceedings, so long as such proceedings meet the certification requirements in Section 623(a)(3). Such flexibility is also consistent with the congressional command that the Commission implement regulations that do not impose undue administrative burdens; such burdens would result if the Commission required franchising authorities to implement a specific regulatory process structured by the Commission, rather than allowing franchising authorities to use procedures already in place that meet the certification requirements and protect the due process rights of subscribers and cable operators.

b. Franchising Authorities Must Have a Reasonable Time Period to Review Rates.

Local Governments believe that franchising authorities (and the Commission in those circumstances where it regulates basic rates) must be granted a reasonable time to determine whether a cable operator's basic rates are "reasonable." This time period must be sufficient to ensure that the franchising authority or

Commission has time to consider the views of interested parties, request and review financial data and other information from the operator necessary to making a rate decision, and take such other actions as necessary to determine, consistent with the Commission's regulations, whether an existing rate or proposed rate increase is reasonable.

Local Governments believe that the 120-day period the Commission uses to review common carrier tariffs would be a reasonable period of time to initially review basic rates. At the end of the 120-day period, Local Governments should have the option of either:
(a) disapproving the rate; (b) approving the rate;
(c) approving the rate, subject to further review; or
(d) postponing a decision subject to further review.

A franchising authority should have the right to choose options (c) or (d) if it needs further information from the cable operator to make a decision, or other circumstances require the franchising authority to postpone a decision. The franchising authority should have an additional 90 day period to make a decision based on the review of such information. At the end of this additional 90 day period, a franchising authority would be required to either approve or disapprove of the cable operator's basic cable rate.

This additional 90-day time period is a reasonable period of time to consider a rate increase.[25]

The Commission should interpret the 30-day notice provision in Section 623(b)(6) simply as a requirement that a cable operator give notice to a franchising authority of its intent to raise its rates. Similar notice requirements are included in franchise agreements across the country, and are in no way related to the ability of a franchising authority to regulate rates -- particularly since, prior to the 1992 Cable Act, most of these franchising authorities did not have the legal right to regulate rates and such notification was solely informational.[26]

Congress did not intend for the 30-day notice requirement to be interpreted as a time limitation on a

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[25] The same 120-day and 90-day time period should apply to a franchising authority's initial review of a cable operator's rates after it is certified. The period should not begin to run until after the franchising authority has provided notice to the cable operator that it intends to review its rates for basic cable service. There should not be a time limit on how long after a franchising authority is certified that it must regulate rates since, after receiving certification, a franchising authority may actually have to implement the regulatory structure necessary for it to regulate rates pursuant to such certification.

[26] See, e.g., Comcast Cablevision, Inc. v. City of Sterling Heights, 443 N.W.2d 400 (Mich. Ct. App. 1989), appeal denied, No. 86720 (Mich. Feb. 26, 1990) (court upheld rate increase notice requirement as consumer protection measure a franchising authority may impose pursuant to Section 632 of the Communications Act).

certified franchising authority to regulate rates, or to allow a cable operator to unilaterally impose a rate increase at the end of the 30-day period. If Congress had intended such a reading of the provision, it could have required a cable operator to provide such notice only to a franchising authority certified to regulate rates. Instead, the provision requires that all franchising authorities receive notice of a basic rate increase.

Moreover, Congress clearly contemplated that the Commission would establish the regulations governing rate regulation, including time periods in which a franchising authority must review a rate. See Section 623(a). Congress intended that such time period be long enough so that, among other things, it provided a "reasonable opportunity for consideration of the views of interested parties." See Section 623(a)(3)(C). A review period that concluded 30 days after a franchising authority received notice of a rate increase would not provide a "reasonable opportunity" for a franchising authority to notify, receive comments from, and take into account the views of, interested parties.

The 30-day notice period should be viewed, as we believe it was intended, as the trigger for the start of the rate regulatory process. The notice may spur many franchising authorities to file certification requests

so that they might regulate the proposed rate increase. Others might take the opportunity to file a complaint with the Commission in franchise areas where the Commission regulates basic rates. Franchising authorities certified to regulate rates may use the 30-day period to take initial steps in starting the their own regulatory review process.

c. Regulatory Review of Basic Rates Is Appropriate at Any Time to Ensure They Remain "Reasonable."

Certified franchising authorities should have the right to review any rate increase proposed by a cable operator -- regardless of why the cable operator seeks such an increase. A franchising authority has a responsibility to ensure that even a rate increase imposed as a result of an event that a cable operator claims is outside of its control is "reasonable" and is not an opportunity exploited by the cable operator to obtain additional revenues.

Local Governments believe that cable operators should provide public notice (through subscriber bill stuffers and through local newspapers or other means)[27]

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[27] Section 623(a)(3)(C) requires that a franchising authority "provide a reasonable opportunity for consideration of the view of interested parties." In addition to subscribers, such parties may include potential subscribers and others. To ensure that such parties have notice of a proposed rate increase, the cable operator must provide notice by means in addition to a bill stuffer that only subscribers receive.

of proposed basic rate increases at the same time such notice is provided to the franchising authority, or within a 30-day period after notice to a franchising authority.[28] Such notice also should inform subscribers where and how they might contest the rate increase.

d. Local Regulations Should Govern Comment by Interested Parties

Many jurisdictions have in place regulations governing public comment by parties on matters of public concern. These regulations may provide for public hearings or written comments from such parties. The Commission should allow jurisdictions the flexibility to apply such regulations and should not structure any particular regime for public participation that may be inconsistent with the regulations in place in many jurisdictions.

The requirement in Section 623 for comment by interested parties should be satisfied if a franchising authority certifies that it will afford the public in

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[28] Moreover, Local Governments believe that a cable operator should provide initial written notice of basic tier availability to existing subscribers within 30 days or one billing cycle from the effective date of the Commission's rate regulations. Thereafter, a cable operator should notify potential subscribers of the availability of basic service in any sales information or advertisements containing the rates for other tiers of service provided by a cable operator. A franchising authority certified to regulate basic rates should have the authority under the Commission's regulations to prescribe the format and content of such notice.

the franchise area "appropriate notice and participation" in the rate regulatory proceeding. This is the requirement that Congress has imposed on franchising authorities in renewal proceedings, see Section 626(a), and it is consistent with the statutory requirement that the Commission implement regulations that reduce the administrative burdens on franchising authorities.

e. Cable Operators Should Bear Burden of Demonstrating That a Rate Is "Reasonable."

The Commission should require cable operators to demonstrate by a preponderance of evidence that existing rates and all rate increases are reasonable. Such a burden is fair since cable operators have in their control the information necessary to prove that a rate is reasonable. "[T]hose whose rates are regulated characteristically bear the burden and the risk of justifying their rates and their costs." Texaco Inc., 417 U.S. at 391.

f. Franchising Authorities Should Have the Right to Collect Information and Impose Appropriate Remedies.

The Commission's regulations should clarify the right of a franchising authority to obtain any information necessary for the franchising authority to

make a rate decision.[29] Congress clearly intended for franchising authorities to have "such financial information as may be needed for purposes of administering and enforcing" Section 623. See Section 623(g). Such right to information also should include any proprietary information concerning cable programming costs or other matters that a franchising authority reasonably believes is needed to make a rate determination, so long as the franchising authority has in place regulations, consistent with applicable law,

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[29] One important source of information to which Local Governments must have access to enforce the Commission's rules are rate complaints filed by consumers for those services that are regulated. In the Commission's most recent Order governing technical standards for cable television, the Commission concluded that the privacy provisions in the Communications Act prohibit local franchising authorities from obtaining the names of persons filing technical complaints (although franchising authorities may obtain aggregate data). See Memorandum Opinion and Order in MM Dockets Nos. 91-169 and 85-38 (released November 24, 1992) at 14-15. Local Governments have argued in that proceeding, and continue to believe, that Section 631 of the Communications Act does not apply to such complaints. Local Governments urge the Commission not to prohibit access to rate complaints by a franchising authority. Local Governments note that the privacy concerns that the Commission expressed in the technical standards proceeding are not applicable here. The Commission was concerned in the technical standards proceeding that a cable subscriber's complaint about technical quality on a particular channel would disclose his viewing preferences. Rate complaints, on the other hand, will relate to charges for a tier of different programming services -- rather than a particular programming service -- or equipment and installation. Per channel and per program offerings that might disclose a subscriber's viewing habits would not be subject to rate regulatory review.

designed to protect such information from public disclosure. Section 623(g) does not indicate an intent by Congress that franchising authorities and the Commission not have access to such information.

Local Governments agree with the Commission that franchising authorities should have the right to enforce a rate decision by imposing any remedies, fines or other measures prescribed by the Commission.[30] Section 623 clearly states that the Commission should implement procedures "by which . . . franchising authorities may enforce the regulations prescribed by the Commission." Section 623(b)(5)(A) (emphasis added). The subsection does not indicate that Congress intended to prevent a franchising authority from taking remedial measures in the event a cable operator violated a franchising authority's rate decision. Moreover, so long as they are not irreconcilable with the Commission's remedies, franchising authorities should have the right to impose any other remedies under state or local law or regulation, or a franchise agreement.[31]

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[30] Among other things, the Commission should impose reporting requirements on a cable operator that demonstrate the cable operator is complying with a franchising authority's decision. A franchising authority also should have the right to conduct reasonable oversight proceedings to ensure that a cable operator is complying with the Commission's rules.

[31] Furthermore, the fact that a franchise agreement
[Footnote continued on next page]

Moreover, a franchising authority must have the authority to order rate reductions. Otherwise, in its initial review of basic rates, a franchising authority could not ensure that a rate is reasonable if it could not reduce the rate to a "reasonable" rate. Moreover, after initial review, if a franchising authority institutes a regulatory proceeding to review an existing rate -- after, for example, a reduction in the number of basic programming offerings by the cable operator -- a franchising authority should have the power to reduce the rate to a reasonable level in the event that the cable operator fails to reduce the rate. Local Governments believe franchising authorities should have the option of either allowing a cable operator to propose a different rate increase or setting a rate.[32]

[Footnote continued from previous page]
does not contain provisions for rate regulation would not prohibit a franchising authority from denying franchise renewal based on a cable operator's failure to comply with a rate decision by either the franchising authority or the Commission. Such a failure would constitute a violation of law, and Section 626 clearly states that a franchising authority may deny renewal based on the failure of a cable operator to "substantially compl[y] with the material terms of the existing franchise and with applicable law." Section 626(c)(1)(A) (emphasis added).

[32] The establishment of a rate by the franchising authority would reduce administrative burdens on the franchising authority and the cable operator -- and the Commission, if a cable operator challenges a rate decision -- since it would prevent a franchising authority from rejecting numerous rate proposals by the
[Footnote continued on next page]

In addition, a franchising authority should have the right to order refunds in situations where a cable operator imposed a rate increase without approval and the franchising authority later determines that such rate increase is not reasonable. Refunds are also appropriate if a franchising authority authorizes a rate increase subject to further review, and then, after such review, the franchising authority determines such rate increase is unreasonable.

A franchising authority clearly must have the power to order rate refunds or reductions, to set a basic rate, or take any other measures[33] in order to ensure that basic rates are reasonable. Such actions are not prohibited by the 1992 Cable Act, and are consistent with the statutory requirement that

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[Footnote continued from previous page]
cable operator until the cable operator submits a rate that a franchising authority deems reasonable.

[33] The Commission should grant franchising authorities some flexibility in structuring how to reduce current basic rates that are deemed unreasonable. In addition to an actual reduction in rates, franchising authorities should have the option of: (a) "freezing" current rates for a period of time until the rate charged by the cable operator is consistent with what would be reasonable under the Commission's benchmark rate; (b) giving cable subscribers rate credits or rebates, or a combination of both; or (c) ordering a combination of a rate freeze and rebates or credits. Such flexibility will ensure that cable subscribers are protected and allow a franchising authority to regulate in a way that does not make it financially difficult for a cable operator to comply.

subscribers pay only "reasonable" rates for basic cable service.

g. The Commission Must Establish Procedures for Expeditious Review of Rate Disputes.

Section 623(b)(5)(B) requires the Commission to establish "procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of [the Commission's basic rate] regulations."[34] Local Governments believe that the Commission, rather than the courts, should resolve rate disputes in order to ensure that there remains a consistent set of rate regulatory rules applied across the country, rather than a patchwork of standards that would result if courts interpret the Commission's rules differently. As on the local level, the cable operator should bear the burden of demonstrating that it is entitled to a rate denied by a franchising authority. The Commission should not conduct de novo review of such disputes and should

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[34] Section 623(b)(5)(B) makes clear that only a cable operator may challenge a rate decision, not other interested parties. Hence, if a franchising authority and cable operator reach an agreement on a rate, such an agreement is not subject to appeal pursuant to Section 623(b)(5)(B). However, if an interested party thought that a franchising authority reached its decision in violation of the Commission's regulations (e.g., a franchising authority is not certified), then the subscriber could file a petition with the Commission.